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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

Case No. 2:17-CR-141 JCM (VCF)

8 Plaintiff(s),

ORDER

9 v.

10 JOEL ACQUINO PASAY,

11 Defendant(s).

12
13 Presently before the court the matter of *United States of America v. Pasay*, case number
14 2:17-cr-00141-JCM-VCF. On December 20, 2019, the parties filed a joint status report
15 indicating that defendant Joel Pasay died. (ECF No. 38).

16 “Death pending appeal of a criminal conviction abates not only the appeal but **all**
17 **proceedings in the prosecution from its inception.**” *United States v. Oberlin*, 718 F.2d 894,
18 895 (9th Cir. 1983) (citing *Durham v. United States*, 401 U.S. 481, 483 (1971) (per
19 curiam); *United States v. Bechtel*, 547 F.2d 1379 (9th Cir. 1977)) (emphasis added). When a
20 defendant dies while his appeal is pending, the case is “remanded to the district court with
21 instructions to **vacate the judgment and to dismiss the indictment.**” *Id.* (emphasis added).
22 The Ninth Circuit explained that “the reasoning behind this rule is stated simply as ‘all private
23 criminal injuries or wrongs, as well as all public crimes, are buried with the offender.’” *Id.* at
24 896 (quoting *United States v. Dunne*, 173 F. 254, 258 (9th Cir.1909) (*quoting in turn United*
25 *States v. Daniels*, 47 U.S. (6 How.) 11, 13 (1848))). Recently, this reasoning has been as follows:

26 [W]hen an appeal has been taken from a criminal conviction to the
27 court of appeals and death has deprived the accused of his right to
28 our decision, the interests of justice ordinarily require that he not
stand convicted without resolution of the merits of his appeal,

1 which is an “integral part of [our] system for finally adjudicating
2 [his] guilt or innocence.”

3 *Id.* (quoting *Moehlenkamp*, 557 F.2d at 128 (quoting in turn *Griffin v. Illinois*, 351 U.S.
4 12, 18 (1956)) (alteration in original).

5 The court finds no reason why this reasoning does not apply with equal or greater force to
6 a defendant’s death while awaiting trial. Indeed, death has deprived Mr. Pasay of his right to a
7 speedy trial, his right to confront witnesses against him, and his right to testify on his own behalf
8 as guaranteed to him by the Fifth and Sixth Amendments. U.S. Const. amend. V, VI.

9 Accordingly,

10 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the matter of *United*
11 *States of America v. Pasay*, case number 2:17-cr-00141-JCM-VCF, be, and the same hereby is,
12 DISMISSED.

13 DATED February 19, 2020.

14 
15 UNITED STATES DISTRICT JUDGE